APPENDIX A

Only the Westlaw citation is currently available.

NOTICE: RULE 2 OF THE OHIO SUPREME COURT RULES FOR THE REPORTING OF OPINIONS IMPOSES RESTRICTIONS AND LIMITATIONS ON THE USE OF UNPUBLISHED OPINIONS.

Court of Appeals of Ohio, Eighth District,
Cuyahoga County.

STATE of Ohio, Plaintiff-Appellee,
v.
Thomas RICHARD, Defendant-Appellant.
No. 76796.
Dec. 7, 2000.

Criminal appeal from Court of Common Pleas, Case No. CR-369653, Affirmed.

William D. Mason, Cuyahoga County Prosecutor and Rita R. Johnson, Assistant Prosecuting Attorney, Cleveland, Ohio, for Plaintiff-Appellee.

James R. Willis, Cleveland, Ohio, for Plaintiff-Appellant.

JOURNAL ENTRY AND OPINION

PORTER.

Defendant-appellant Thomas Richard appeals from his convictions for possession of drugs (> R.C. 2925.11), trafficking in cocaine (> R.C. 2925.03), carrying a concealed weapon (> R.C. 2923.12) and possession of criminal tools (> R.C. 2923.24). Defendant contends the trial court erred in failing to suppress illegally seized property; in not requiring the State to identify the specific purchasers of illegal drugs; in denying defendant's motion to acquit; and in ordering forfeiture of property seized. For the reasons hereinafter stated, we affirm.

On January 12, 1999, defendant filed a motion to suppress and for return of illegally seized property. Subsequently, on

February 11, 1999, the trial court held a hearing on this motion. At the hearing, the State presented the testimony of several members of the SWAT team who executed the search warrant. The defendant then presented the testimony of several witnesses who were present in the 8407 Wade Park home at the time the SWAT team executed the search warrant: defendant Thomas Richard; Jeffrey Richard, defendant's brother and co-defendant; Challie Kelly, defendant's brother; and Jimmie Richard, defendant's mother.

Defendant denied that he ever participated in a drug transaction, denied that he ever stored drugs in a 1985 Beige Cutlass Oldsmobile and denied that the Beckman Road house was a stash house for storing drugs. He also stated that never entered the side door of the Beckman Road house as alleged by police in the search warrant affidavit as he always used the front entrance. He thereafter testified to the events that transpired when the SWAT team raided the Wade Park Avenue home. He claimed that the SWAT team never knocked on the door but immediately bashed in the door.

After the SWAT team conducted the search of the Wade Park Avenue house, the defendant testified that he was then taken to the Beckman Road house. After kicking in the outside door, the SWAT team then used a key to open another door leading into the home. The key was found on a key ring found at the Wade Park Avenue house. The Beckman Road residence was then searched.

On cross examination the defendant claimed that his residence at the time the two homes were searched was 1585 East 84th Street. He claimed a woman named Dacia Love lived at the Beckman Road house.

Dacia Love testified that she lived at the Beckman Road address and that she was defendant's girlfriend and mother of his four children. She stated that defendant stayed at the Beckman Road address off and on and that he paid the rent for the house. She claimed that she also has another home on Wade Park but that she and the children live at the Beckman Road address.

Defendant's brother and co-defendant Jeffrey Richard testified to the search by the SWAT team. On cross examination he testified that he resided at the 8704 Wade Park home. He testified

that his Cadillac was confiscated from the front of the house along with defendant's beige Cutlass. He said that defendant's Cadillac at the Beckman Road house was also seized.

Calvin Williams, Sergeant of the SWAT team, testified that his unit was requested to obtain a search warrant to be executed at 8407 Wade Park, Cleveland. Sgt. Williams explained that the SWAT team was usually used on warrants that are deemed to be high risk. At the SWAT team briefing, prior to the action, the officers learned details about the premises to be searched. Specifically, they were informed that there were guns involved; there were children at the residence; there was a lot of recent police activity at the residence; there were drugs involved; and that there were several armed males that frequented the house and also lived in the house. When the team arrived at the house, they went onto the front porch, verified the address and gained access to the house by ramming the door. Sgt. Williams testified that before ramming the door he yelled, police as they always do and waited about five to six seconds. This testimony was corroborated in large part by SWAT team Officer Dennis Blotnik who participated in the action.

On cross-examination, Sgt. Williams explained that not only did they yell police but they also made a great deal of noise to emphasize the fact that they were the police. Furthermore, Williams testified that they waited about five to six seconds after announcing police, there was no reply, even though they knew there were people inside, before ramming the door.

Officer Rick Sheppard testified that he was also present as a member of the SWAT team on September 30, 1998. He was the designated doorman that evening and was responsible for the ram. He testified that he approached the door, squared up with it, yelled police, and then knocked on the door with the ram. When he got no answer, he hit the door open. He testified that the SWAT team was told that there were extensive drug sales going on in the house; that there were firearms in the house; and that on the evening before, detectives witnessed zone cars at the house in connection with shots fired. Officer Sheppard acknowledged that this information absolutely played a role in the way that the SWAT team gained entry into the home. On cross-examination, Officer Sheppard explained that he waited about four seconds before ramming the door in. That

was enough time to allow a response, but not enough time for the occupants to get to any guns.

Detective Richard Ruffin, the affiant on both the 8407 Wade Park and 8722 Beckman Road search warrants, testified regarding the surveillance that had been conducted prior to obtaining the warrants. He stated that citizen complaints were received by the Cleveland Police Department that a Tom Richards or Tom Richardson was engaged in drug trafficking at the 8722 Beckman residence and that the suspect also keeps drugs in his 1985 beige Oldsmobile Cutlass. Citizen complaints were also received indicating that a Tom Richards and his brother, Jeff were engaged in drug trafficking at 8407 Wade Park Avenue.

The detective stated that the surveillance lasted about a week or two. During this time a large amount of vehicular and pedestrian traffic was witnessed coming and going from the Wade Park address. The individuals visiting the address would engage a male in a brief conversation and then a hand to hand exchange would take place. The detective identified the defendant and his brother Jeffrey as the males he saw take part in the hand to hand transactions.

The Street Crimes Unit conducted three controlled buys using a confidential informant: one from defendant Thomas Richard and two from Jeffery Richard. During one of the controlled buys, the informant had a brief conversation with defendant in the front yard of the home and then walked away without making an exchange. Defendant then drove away in his beige Cutlass. The informant told the detective that the defendant told him he had to go and get the drugs. Defendant was followed to 8722 Beckman where he stayed approximately five to seven minutes before returning to 8407 Wade Park. The informant returned and purchased drugs from defendant.

Det. Ruffin also testified that the reason SWAT was used to gain entrance was because there was believed to be a lot of weapons in the house and there was also a large volume of people in the house. Det. Ruffin further testified that it is easy to destroy narcotics prior to the entry of police. Defendant also had a felonious assault arrest in 1995.

Det. Ruffin testified that entrance to the Beckman Road case was gained by using a key obtained from the Wade Park home. He testified that he was aware defendant lived in the upstairs part of the duplex as his name was on the utilities and his 1995 felonious assault arrest listed Beckman as the address.

Detective Ruffin testified on cross examination that $44,045 in cash was seized from the Beckman Road house. Det. Ruffin testified that the money was seized due to complaints that the Beckman Road house was a stash house and that in his experience the drugs and money are usually kept at a different place from where the drugs are sold. The detective did not find any of the buy money in the $40,000 stash. On redirect, Det. Ruffin testified that seized from the Beckman Road address were two shotguns; two scales; suspected cocaine from the kitchen table; suspected marijuana from the front bedroom; $40,000 from a safe that was kept inside a dryer in the kitchen; and $4,045 recovered from a dresser drawer; and a Cadillac belonging to the defendant.

Detective Richard Milligan also testified about the circumstances that resulted in the surveillance of the area and the search warrant issued on the 8407 Wade Park and 8722 Beckman Road premises.

At the conclusion of Det. Milligan's testimony, the parties presented their closing arguments regarding the motion to suppress and return of illegally seized property. On February 25, 1999, the trial court ordered that two Cadillacs be returned to the defendant and Jeffrey Richard. Subsequently, on June 16, 1999, the trial court denied defendant's motion to suppress and for return of illegally seized property.

After several continuances, defendant's trial finally commenced on June 22, 1999. The State presented the testimony of several police officers who were involved in the execution of the search warrants for 8407 Wade Park and 8722 Beckman.

Det. Milligan testified that they set up surveillance at 8407 Wade Park and 8722 Beckman Road after receiving complaints from Crime Stoppers. The police were given information that two brothers, Tom and Jeff were selling drugs out of their mother's home on Wade Park Avenue. Descriptions of the two men were also

given. During surveillance, they observed heavy pedestrian and vehicular traffic at the Wade Park address. With the aid of binoculars, they witnessed individuals visiting the residence engaging in hand-to-hand transactions in the front yard and porch area or coming and going from the house for a short period. The night before the search warrants were executed, shots were fired at the Wade Park address and several zone cars responded.

He described a controlled buy on September 23, 1998, with the assistance of a Confidential Reliable Informant (CRI). Det. Milligan and his partner Det. Terry Preston met with the CRI and set up the controlled buy from defendant which they observed through binoculars in the front yard. The CRI approached the defendant with $50 and asked for drugs. After a few moments of conversation,the defendant entered a beige Cutlass and drove off. About 10 to 15 minutes later, defendant returned and gave the CRI the drugs.

After the first controlled buy from defendant, Det. Milligan testified that they continued their surveillance, and on September 28 and 30, 1998, second and third controlled buys were made from defendant's brother Jeffrey Richard with the assistance of a CRI. The buy on September 30th occurred about two hours before the search warrant was executed for the purpose of placing the police buy money in the house.

Det. Milligan testified that he participated in the searches of 8407 Wade Park and 8722 Beckman. At Wade Park, he found a black vinyl leather-like pouch in Jeffrey Richard's bedroom which contained five rocks of crack cocaine, $173 in U.S. currency and the police buy money from the last controlled buy. Three loaded guns were also located in that same bedroom, two under the mattress, a .380 automatic and a .38 caliber revolver. The third gun, a .25 caliber Raven, was located on the dresser. Det. Milligan testified that he knew this to be Jeffrey Richard's bedroom based on the personal papers found there.

Det. Milligan testified that a loaded .38 caliber revolver was recovered under the front seat of the defendant's beige Cutlass Oldsmobile. At the Beckman Road address they found $40,000 in a safe located in the kitchen dryer. The money was bundled in $2,000 amounts. He did not believe this money came from a bank as the dollar amounts were in random order.

Det. Preston also testified regarding the surveillance of 8407 Wade Park and 8722 Beckman Road, the controlled buys, the obtaining of the search warrant, and the execution of the warrant. He testified that during the execution of the warrant, he was accompanied by Sgt. James Lewis, Det. Milligan, Det. Ruffin, Det. Jamusca Britten, Det. Matthew Speights and other members of the SWAT team. He testified that the SWAT team is used in the execution of a search warrant when the situation is determined to be extremely dangerous. Det. Preston testified that at 8407 Wade Park a safe was found which they learned belonged to Jeffrey Richard. The safe contained $10,043 in cash and a tempered glass tube which is often used to cook or process crack cocaine.

Sgt. Lewis testified to the execution of the warrants at the two homes. He stated that the two scales found at the Beckman Road house were triple beam scales which are more sensitive scales than an ordinary kitchen scale. He stated that in his 33 years of experience as an officer, the scales were indicative of drug activity.

Det. Ruffin, Det. Britten, Det. Walker and Det. Speights also testified for the prosecution regarding the execution of the search warrants for 8407 Wade Park and 8733 Beckman Road.

At the conclusion of the State's case-in-chief, the defense moved for a > Crim.R. 29 motion for acquittal. This motion was denied by the trial court.

The defense then presented the testimony of Jimmie Richard, Dacia Love, Challie Kelly and defendant who were all present at 8407 Wade Park at the time the search warrant was executed. They all testified to the SWAT team's storming of the home with their guns pointed and ordering the men to the floor and the women and children to the couch.

On July 7, 1999, the jury returned its verdict finding defendant guilty of two counts of possession of drugs (> R.C. 2925.11); one count of drug trafficking (> R.C. 2925.03), one count of carrying a concealed weapon (> R.C. 2923.12) and one count of possession of criminal tools (> R.C. 2923.23). Defendant's post-trial motions for acquittal and for a new trial were denied by the trial court. Defendant was subsequently sentenced to six months on each

count, with all to run concurrent to each other except for Count Three, possession of drugs, which was to run consecutive with the other counts, for a total of 12 months. Thereafter, the trial court pursuant to defendant's motion merged one of the counts for possession of drugs with the count for drug trafficking and dismissed the possession count.

We will address defendant's assignments of error in the order presented.

I. THE COURT ERRED WHEN IT DENIED THE DEFENDANT'S MOTION TO SUPPRESS.

In his first assignment of error, defendant asserts that there was insufficient probable cause to support the search warrant issued for the Beckman Road House. Defendant asserts that, as a result, the search of the home was unreasonable and any items seized during the search were inadmissible and should have been suppressed.

The Fourth Amendment to the United States Constitution guarantees people the right to be free from unreasonable searches and seizures and provides that no warrants shall issue but upon probable cause. When reviewing the sufficiency of probable cause in an affidavit submitted in support of a search warrant, the duty of the reviewing court is only to ensure that the issuing judge had a substantial basis for concluding that probable cause existed. > State v. George (1989), 45 Ohio St.3d 325, 544 N.E.2d 640, paragraph two of the syllabus, following > Illinois v. Gates (1983), 462 U.S. 213, 238-239, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527. To determine the sufficiency of probable cause in an affidavit in support of a search warrant, the issuing judge must:

[M]ake a practical, common-sense decision whether given all of the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Id. at paragraph one of the syllabus. A reviewing court should accord great deference to the judge's determination of

probable cause, and doubtful cases should be resolved in favor of upholding the warrant. Id.

In the instant case, the affidavit in support of the search warrant was signed by Det. Ruffin and states that over the past month, several citizens' complaints and a Crime Stoppers complaint were received by the police department that Tom Richards or Tom Richardson and his brother Jeff were trafficking in drugs at 8407 Wade Park Avenue. The crime stopper's report indicated that the house on 8722 Beckman Road was a stash house.

Surveillance of the Wade Park residence indicated very heavy pedestrian and vehicular traffic with suspected drug trafficking observed at that location. The affidavit states that members of the police department were contacted by a confidential informant who told them the defendant's name was Tom Richards and that he was selling drugs from the Wade Park address and used the address on Beckman Road as a stash house. The officers thereafter set up a controlled buy using the CRI. They observed the CRI approach the defendant and saw the defendant leave the Wade Park house in a beige Cutlass, drive to 8722 Beckman Avenue and a short time later returned to 8407 Wade Park where he was then gave the CRI the drugs. The affidavit also stated that the police observed other similar activity between the defendant and people who would come to the Wade Park house. The defendant was seen to leave the Wade Park address and followed to the Beckman Road address. Upon his return, the defendant was observed making hand-to-hand transactions with the various individuals. The affidavit expresses that this activity is indicative of drug trafficking. The affidavit also described the two controlled purchases by the CRI from Jeffrey

We find, based on this information contained in the affidavit, that the judge had a substantial basis for concluding that sufficient probable cause existed for a search warrant. In this finding, we must note the great deference that must be accorded to the judge's probable cause determination and that any doubts are to be resolved in upholding the warrant.

We find that the trial court could justifiably find that the search of the home was reasonable based on the circumstances that existed at the time of the execution of the search warrant. Thus, the trial court correctly denied defendant's motion to suppress.

Assignment of Error I is overruled.

II. GIVEN THE OFFICERS' TESTIMONY THAT ENTRY INTO THE WADE PARK HOME FOLLOWED WITHIN 2-3 SECONDS OF THEIR KNOCK, EVEN IF THIS WERE TRUE, THE FORCIBLE ENTRY (GAINED BY THE USE OF A BATTERING RAM) WAS NONETHELESS UNLAWFUL AND INDEFENSIBLE. BECAUSE THIS WAS SO, THE ARREST OR INCIDENT TO THE EXECUTION OF THE WARRANT MUST BE DEEMED FRUIT OF THE POISONOUS TREE.

Defendant further asserts that the SWAT team's unannounced entry into the residence was unlawful. We disagree.

Det. Ruffin, Det. Britten, Det. Walker and Det. Speights also testified for the prosecution regarding the execution of the search warrants for 8407 Wade Park and 8733 Beckman Road.

At the conclusion of the State's case-in-chief, the defense moved for a > Crim.R. 29 motion for acquittal. This motion was denied by the trial court.

The defense then presented the testimony of Jimmie Richard, Dacia Love, Challie Kelly and defendant who were all present at 8407 Wade Park at the time the search warrant was executed. They all testified to the SWAT team's storming of the home with their guns pointed and ordering the men to the floor and the women and children to the couch.

On July 7, 1999, the jury returned its verdict finding defendant guilty of two counts of possession of drugs (> R.C. 2925.11); one count of drug trafficking (> R.C. 2925.03), one count of carrying a concealed weapon (> R.C. 2923.12) and one count of possession of criminal tools (> R.C. 2923.23). Defendant's post-trial motions for acquittal and for a new trial were denied by the trial court. Defendant was subsequently sentenced to six months on each count, with all to run concurrent to each other except for Count Three, possession of drugs, which was to run consecutive with the other counts, for a total of 12 months. Thereafter, the trial court pursuant to defendant's motion merged one of the counts for

possession of drugs with the count for drug trafficking and dismissed the possession count.

We will address defendant's assignments of error in the order presented.

I. THE COURT ERRED WHEN IT DENIED THE DEFENDANT'S MOTION TO SUPPRESS.

In his first assignment of error, defendant asserts that there was insufficient probable cause to support the search warrant issued for the Beckman Road House. Defendant asserts that, as a result, the search of the home was unreasonable and any items seized during the search were inadmissible and should have been suppressed.

The Fourth Amendment to the United States Constitution guarantees people the right to be free from unreasonable searches and seizures and provides that no warrants shall issue but upon probable cause. When reviewing the sufficiency of probable cause in an affidavit submitted in support of a search warrant, the duty of the reviewing court is only to ensure that the issuing judge had a substantial basis for concluding that probable cause existed. > State v. George (1989), 45 Ohio St.3d 325, 544 N.E.2d 640, paragraph two of the syllabus, following > Illinois v. Gates (1983), 462 U.S. 213, 238-239, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527. To determine the sufficiency of probable cause in an affidavit in support of a search warrant, the issuing judge must:

[M]ake a practical, common-sense decision whether given all of the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

Id. at paragraph one of the syllabus. A reviewing court should accord great deference to the judge's determination of probable cause, and doubtful cases should be resolved in favor of upholding the warrant. Id.

In the instant case, the affidavit in support of the search warrant was signed by Det. Ruffin and states that over the past

month, several citizens' complaints and a Crime Stoppers complaint were received by the police department that Tom Richards or Tom Richardson and his brother Jeff were trafficking in drugs at 8407 Wade Park Avenue. The crime stopper's report indicated that the house on 8722 Beckman Road was a stash house.

Surveillance of the Wade Park residence indicated very heavy pedestrian and vehicular traffic with suspected drug trafficking observed at that location. The affidavit states that members of the police department were contacted by a confidential informant who told them the defendant's name was Tom Richards and that he was selling drugs from the Wade Park address and used the address on Beckman Road as a stash house. The officers thereafter set up a controlled buy using the CRI. They observed the CRI approach the defendant and saw the defendant leave the Wade Park house in a beige Cutlass, drive to 8722 Beckman Avenue and a short time later returned to 8407 Wade Park where he was then gave the CRI the drugs. The affidavit also stated that the police observed other similar activity between the defendant and people who would come to the Wade Park house. The defendant was seen to leave the Wade Park address and followed to the Beckman Road address. Upon his return, the defendant was observed making hand-to-hand transactions with the various individuals. The affidavit expresses that this activity is indicative of drug trafficking. The affidavit also described the two controlled purchases by the CRI from Jeffrey

We find, based on this information contained in the affidavit, that the judge had a substantial basis for concluding that sufficient probable cause existed for a search warrant. In this finding, we must note the great deference that must be accorded to the judge's probable cause determination and that any doubts are to be resolved in upholding the warrant.

We find that the trial court could justifiably find that the search of the home was reasonable based on the circumstances that existed at the time of the execution of the search warrant. Thus, the trial court correctly denied defendant's motion to suppress.

Assignment of Error I is overruled.

II. GIVEN THE OFFICERS' TESTIMONY THAT ENTRY INTO THE WADE PARK HOME FOLLOWED WITHIN 2-3

SECONDS OF THEIR KNOCK, EVEN IF THIS WERE TRUE, THE FORCIBLE ENTRY (GAINED BY THE USE OF A BATTERING RAM) WAS NONETHELESS UNLAWFUL AND INDEFENSIBLE. BECAUSE THIS WAS SO, THE ARREST OR INCIDENT TO THE EXECUTION OF THE WARRANT MUST BE DEEMED FRUIT OF THE POISONOUS TREE.

Defendant further asserts that the SWAT team's unannounced entry into the residence was unlawful. We disagree.

* * * The purpose of the privilege is the furtherance and protection of the public in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials, and, by preserving their anonymity, encourage them to perform that obligation. See > Roviaro v. United States (1957), 353 U.S. 53, 59, 77 S.Ct. 623, 1 L.Ed.2d 639.

> State v. Crawford (June 11, 1998), Cuyahoga App. No. 72893, unreported.

Det. Milligan and Det. Preston testified that they searched the CRI, gave him the buy money, observed the CRI meet with defendant, and observed the CRI return with crack cocaine and without the buy money. Defendant has failed to show that disclosure of the CRI's identity was vital to establishing an essential element of the offenses charged or was helpful in preparing his defense. The trial court's denial of defendant's request for disclosure was based on a balancing of the public interest and protecting the public flow of information against defendant's right to prepare his defense. We cannot find that this decision was unreasonable, arbitrary or unconscionable to constitute an abuse of the trial court's discretion.

Assignment of Error III is overruled.

IV. THE VERDICTS FINDING THE APPELLANT GUILTY OF THE CHARGES: HE JOINTLY POSSESSED DRUGS FOUND IN THE HOME THAT BELONGED TO HIS BROTHER (COUNT 3); HE SOLD DRUGS TO AN UNIDENTIFIED PERSON (COUNT 4); HE WAS IN POSSESSION OF DRUGS FOUND IN THE WADE PARK HOME (COUNT 7); HE WAS CARRYING A CONCEALED WEAPON (COUNT 10); AND, THAT HE WAS IN POSSESSION OF

CRIMINAL TOOLS, WHICH INCLUDED HIS VEHICLE AND OTHER ITEMS HENCE, THE COURT ERRED WHEN IT DENIED THE APPELLANT'S MOTION FOR JUDGMENT OF ACQUITTAL, WHICH WAS RENEWED AT THE CLOSE OF THE EVIDENCE AND POST-TRIAL.

Defendant asserts that the trial court erred in not granting the > Crim.R. 29 motion for acquittal because there was insufficient evidence to support a conviction. We disagree.

> Crim.R. 29(A) provides that a trial court shall order the entry of a judgment of acquittal * * * if the evidence is insufficient to sustain a conviction of such offense or offenses. A trial court may not grant an acquittal by authority of > Crim.R. 29(A) if the record demonstrates that reasonable minds can reach different conclusions as to whether each material element of a crime has been proved beyond a reasonable doubt. See > State v. Wolfe (1988), 51 Ohio App.3d 215, 216, 555 N.E.2d 689. In making this determination, all evidence must be construed in a light most favorable to the prosecution. Id.

An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The standard of review with regard to the sufficiency of evidence was recently summarized by the Supreme Court in > State v. Smith (1997), 80 Ohio St.3d 89, 113, 684 N.E.2d 668, as follows:

Sufficiency of the evidence is the legal standard applied to determine whether the case may go to the jury or whether the evidence is legally sufficient as a matter of law to support the jury verdict, > State v. Thompkins (1997), 78 Ohio St.3d 380, 386, 678 N.E.2d 541, 546, whereas the [w]eight of the evidence concerns 'the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.' (Emphasis sic.) > Id. at 387, 678 N.E.2d at 546.

In reviewing the record for sufficiency, [t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential

elements of the crime proven beyond a reasonable doubt. > State v. Jenks (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus, following > Jackson v. Virginia (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560. * * *

Defendant asserts that there was insufficient evidence to support his conviction for the controlled buy on September 23, 1998 as the officers' testimony was the only evidence of the buy as no records were shown indicating that the buy in fact occurred, and the CRI was undisclosed making it impossible to cross examine him. Whether the officers' testimony regarding the controlled buy was credible or not was for the trier of fact to determine. Construing their testimony in the light most favorable to the prosecution, there was sufficient evidence of the controlled buy.

Defendant also argues that since there was evidence that another person drove defendant's beige Cutlass Oldsmobile in which the gun was found, there was insufficient evidence to support that the weapon was indeed his. However, evidence was presented that the defendant had two cars. One was a Cadillac located at the Beckman Road address. The other was the beige Cutlass. When the search warrant was executed, the defendant was at the Wade Park address, and his Cutlass was parked out front. This leads to the reasonable conclusion that the defendant drove the car to the Wade Park address. Therefore, there was sufficient evidence that defendant owned the gun found under the driver's seat.

Although the defendant raises in his assignment of error that the evidence was insufficient to support the joint possession and trafficking of drugs with his brother and the criminal tools count, he does not argue the insufficiency in the body of the brief. We nonetheless find the evidence was sufficient to support these counts as well, as the officers testified to the extensive drug transactions that occurred at the Wade Park residence. They witnessed both the defendant and his brother conducting the transactions. The officers also testified that they witnessed the defendant driving his beige Oldsmobile from the Wade Park home to the Beckman home where he would then, after staying at the Beckman residence for several minutes, drive back to the Wade Park home to finish the drug transactions. Although, again, this is solely supported by the officers' testimony, we find their credibility is for the trier of facts.

The trial court properly overruled defendant's > Crim.R. 29(A) motion for acquittal.

Assignment of Error IV is overruled.

V. THE COURT ERRED IN ORDERING THE FORFEITURE OF THE $40,000 IN FUNDS SEIZED FROM THE DEFENDANT'S HOME.

In his final assignment of error, defendant asserts the State failed to establish a sufficient nexus between the $40,000 found in the dryer at the Beckman Road house.

We find that pursuant to > R.C. 2933.41(C), defendant lost the right to possession of the money as there was a sufficient showing that the money was used in the commission of drug offenses. We also find that the $40,000 constituted contraband pursuant to > R.C. 2933.43(A).

> R.C. 2933.41(C)(1) provides that a person loses any right that he or she may have to the possession and ownership of property if the property was the subject, or was used in a conspiracy or attempt to commit, or in the commission, of an offense other than a traffic offense, and the person is a conspirator, accomplice, or offender with respect to the offense. Furthermore, > R.C. 2901.01(13)(e) defines contraband as:

Any controlled substance as defined in > section 3719.01 of the Revised Code, or any device, paraphernalia, money as defined in > section 1301.01 of the Revised Code, or other means of exchange that has been, is being, or is intended to be used in an attempt or conspiracy to violate, or in a violation of, Chapter 2925 or 3719 of the Revised Code.

We find that it was reasonable to conclude that the $40,000 was associated with the drug activity at the 8407 Wade Park residence. Several witnesses testified to the significant amount of drug activity taking place at the Wade Park home and defendant was seen traveling between the Wade Park and Beckman homes in making drug sales. The money was bundled together in amounts of $2,000 with the various amount of the bills in random order. Two

scales commonly used in drug activity were also found on the premises. There was a sufficient showing that the cash was used in the commission of drug trafficking, and therefore, the trial court correctly determined that it was contraband subject to forfeiture.

Assignment of Error V is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to > Rule 27 of the Rules of Appellate Procedure.

DYKE, A.J., and ROCCO, J., concur.

N.B. This entry is an announcement of the court's decision. See > App.R. 22(B), > 22(D) and > 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to > App.R. 22(E) unless a motion for reconsideration with supporting brief, per > App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per > App.R. 22(E). See, also, S.Ct.Prac.R. 112, Section 2(A)(1).

APPENDIX B

R.C. § 2901.01

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XXIX. CRIMES—PROCEDURE
CHAPTER 2901. GENERAL PROVISIONS
GENERAL PROVISIONS

Current through 124th G.A., 2001 Files 1 to 3, apv. 3/30/01

2901.01 DEFINITIONS

(A) As used in the Revised Code:

(1) "Force" means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.

(2) "Deadly force" means any force that carries a substantial risk that it will proximately result in the death of any person.

(3) "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

(4) "Physical harm to property" means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. "Physical harm to property" does not include wear and tear occasioned by normal use.

(5) "Serious physical harm to persons" means any of the following:

(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

(b) Any physical harm that carries a substantial risk of death;

(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

(d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;

(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

(6) "Serious physical harm to property" means any physical harm to property that does either of the following:

(a) Results in substantial loss to the value of the property or requires a substantial amount of time, effort, or money to repair or replace;

(b) Temporarily prevents the use or enjoyment of the property or substantially interferes with its use or enjoyment for an extended period of time.

(7) "Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

(8) "Substantial risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.

(9) "Offense of violence" means any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161, of division (A)(1), (2), or (3) of section 2911.12, or of division (B)(1), (2), (3), or (4) of > section 2919.22 of the Revised Code or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

(b) A violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any section, division, or offense listed in division (A)(9)(a) of this section;

(c) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;

(d) A conspiracy or attempt to commit, or complicity in committing, any offense under division (A)(9)(a), (b), or (c) of this section.

(10)(a) "Property" means any property, real or personal, tangible or intangible, and any interest or license in that property. "Property" includes, but is not limited to, cable television service, other telecommunications service, telecommunications devices, information service, computers, data, computer software, financial instruments associated with computers, other documents associated with computers, or copies of the documents, whether in machine or human readable form, trade secrets, trademarks, copyrights, patents, and property protected by a trademark, copyright, or patent. "Financial instruments associated with computers" include, but are not limited to, checks, drafts, warrants, money orders, notes of indebtedness, certificates of deposit, letters of credit, bills of credit or debit cards, financial transaction authorization mechanisms, marketable securities, or any computer system representations of any of them.

(b) As used in division (A)(10) of this section, "trade secret" has the same meaning as in > section 1333.61 of the Revised Code, and "telecommunications service" and "information service" have the same meanings as in > section 2913.01 of the Revised Code.

(c) As used in divisions (A)(10) and (13) of this section, "cable television service," "computer," "computer software," "computer system," "computer network," "data," and "telecommunications device" have the same meanings as in > section 2913.01 of the Revised Code.

(11) "Law enforcement officer" means any of the following:

(a) A sheriff, deputy sheriff, constable, police officer of a township or joint township police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a

metropolitan housing authority under division (D) of > section 3735.31 of the Revised Code, or state highway patrol trooper;

(b) An officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority;

(c) A mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation;

(d) A member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of the member's appointment or commission;

(e) A person lawfully called pursuant to > section 311.07 of the Revised Code to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called;

(f) A person appointed by a mayor pursuant to > section 737.01 of the Revised Code as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed;

(g) A member of the organized militia of this state or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;

(h) A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor;

(i) An Ohio veterans' home police officer appointed under > section 5907.02 of the Revised Code;

(j) A member of a police force employed by a regional transit authority under division (Y) of > section 306.35 of the Revised Code;

(k) A special police officer employed by a port authority under > section 4582.04 or > 4582.28 of the Revised Code;

(l) The house sergeant at arms if the house sergeant at arms has arrest authority pursuant to division (E)(1) of > section 101.311 of the Revised Code and an assistant house sergeant at arms.

(12) "Privilege" means an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.

(13) "Contraband" means any property described in the following categories:

(a) Property that in and of itself is unlawful for a person to acquire or possess;

(b) Property that is not in and of itself unlawful for a person to acquire or possess, but that has been determined by a court of this state, in accordance with law, to be contraband because of its use in an unlawful activity or manner, of its nature, or of the circumstances of the person who acquires or possesses it, including, but not limited to, goods and personal property described in division (D) of > section 2913.34 of the Revised Code;

(c) Property that is specifically stated to be contraband by a section of the Revised Code or by an ordinance, regulation, or resolution;

(d) Property that is forfeitable pursuant to a section of the Revised Code, or an ordinance, regulation, or resolution, including, but not limited to, forfeitable firearms, dangerous ordnance, obscene materials, and goods and personal property described in division (D) of > section 2913.34 of the Revised Code;

(e) Any controlled substance, as defined in > section 3719.01 of the Revised Code, or any device, paraphernalia, money as defined in > section 1301.01 of the Revised Code, or other means of exchange that has been, is being, or is intended to be used in an attempt or conspiracy to violate, or in a violation of, Chapter 2925. or 3719. of the Revised Code;

(f) Any gambling device, paraphernalia, money as defined in > section 1301.01 of the Revised Code, or other means of exchange that has been, is being, or is intended to be used in an attempt or

conspiracy to violate, or in the violation of, Chapter 2915. of the Revised Code;

(g) Any equipment, machine, device, apparatus, vehicle, vessel, container, liquid, or substance that has been, is being, or is intended to be used in an attempt or conspiracy to violate, or in the violation of, any law of this state relating to alcohol or tobacco;

(h) Any personal property that has been, is being, or is intended to be used in an attempt or conspiracy to commit, or in the commission of, any offense or in the transportation of the fruits of any offense;

(i) Any property that is acquired through the sale or other transfer of contraband or through the proceeds of contraband, other than by a court or a law enforcement agency acting within the scope of its duties;

(j) Any computer, computer system, computer network, computer software, or other telecommunications device that is used in a conspiracy to commit, an attempt to commit, or the commission of any offense, if the owner of the computer, computer system, computer network, computer software, or other telecommunications device is convicted of or pleads guilty to the offense in which it is used.

(14) A person is "not guilty by reason of insanity" relative to a charge of an offense only if the person proves, in the manner specified in > section 2901.05 of the Revised Code, that at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person's acts.

(B)(1)(a) Subject to division (B)(2) of this section, as used in any section contained in Title XXIX of the Revised Code that sets forth a criminal offense, "person" includes all of the following:

(i) An individual, corporation, business trust, estate, trust, partnership, and association;

(ii) An unborn human who is viable.

(b) As used in any section contained in Title XXIX of the Revised Code that does not set forth a criminal offense, "person" includes an individual, corporation, business trust, estate, trust, partnership, and association.

(c) As used in division (B)(1)(a) of this section:

(i) "Unborn human" means an individual organism of the species Homo sapiens from fertilization until live birth.

(ii) "Viable" means the stage of development of a human fetus at which there is a realistic possibility of maintaining and nourishing of a life outside the womb with or without temporary artificial life-sustaining support.

(2) Notwithstanding division (B)(1)(a) of this section, in no case shall the portion of the definition of the term "person" that is set forth in division (B)(1)(a)(ii) of this section be applied or construed in any section contained in Title XXIX of the Revised Code that sets forth a criminal offense in any of the following manners:

(a) Except as otherwise provided in division (B)(2)(a) of this section, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as a violation of > section 2903.01, > 2903.02, > 2903.03, > 2903.04, > 2903.05, > 2903.06, > 2903.08, > 2903.11, > 2903.12, > 2903.13, > 2903.14, > 2903.21, or > 2903.22 of the Revised Code, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence, but that does violate section 2919.12, division (B) of section 2919.13, or > section 2919.151, > 2919.17, or > 2919.18 of the Revised Code, may be punished as a violation of section 2919.12, division (B) of section 2919.13, or > section 2919.151, > 2919.17, or > 2919.18 of the Revised Code, as applicable. Consent is sufficient under this division if it is of the type otherwise adequate to permit medical treatment to the pregnant woman, even if it does not comply with > section 2919.12 of the Revised Code.

(b) In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following:

(i) Her delivery of a stillborn baby;

(ii) Her causing, in any other manner, the death in utero of a viable, unborn human that she is carrying;

(iii) Her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is a viable, unborn human;

(iv) Her causing her child who is born alive to sustain one or more injuries while the child is a viable, unborn human;

(v) Her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness, or other physiological impairment, regardless of its duration or gravity, or a mental illness or condition, regardless of its duration or gravity, to a viable, unborn human that she is carrying.

(C) As used in Title XXIX of the Revised Code:

(1) "School safety zone" consists of a school, school building, school premises, school activity, and school bus.

(2) "School," "school building," and "school premises" have the same meanings as in > section 2925.01 of the Revised Code.

(3) "School activity" means any activity held under the auspices of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district, a governing board of an educational service center, or the governing body of a school for which the state board of education prescribes minimum standards under > section 3301.07 of the Revised Code.

(4) "School bus" has the same meaning as in > section 4511.01 of the Revised Code.

APPENDIX C

R.C. § 2933.41

BALDWIN'S OHIO REVISED CODE ANNOTATED
TITLE XXIX. CRIMES--PROCEDURE
CHAPTER 2933. PEACE WARRANTS; SEARCH WARRANTS
DISPOSITION OF PROPERTY AND CONTRABAND

Current through 124th G.A., 2001 Files 1 to 3, apv. 3/30/01

2933.41 DISPOSITION OF PROPERTY HELD BY LAW ENFORCEMENT AGENCY; WRITTEN INTERNAL CONTROL POLICY; RECORDS AND REPORTS; FUNDING CITIZENS' REWARD PROGRAMS

(A)(1) Any property, other than contraband that is subject to the provisions of > section 2913.34 or > 2933.43 of the Revised Code, other than property that is subject to > section 3719.141 of the Revised Code, other than property that is forfeited under > sections 2923.44 to > 2923.47 or > 2925.41 to > 2925.45 of the Revised Code, other than a vehicle that is criminally forfeited under an order issued under > section 4503.233 or > 4503.234 of the Revised Code and that is to be disposed of under > section 4503.234 of the Revised Code, other than property that has been lawfully seized under > sections 2933.71 to > 2933.75 of the Revised Code in relation to a medicaid fraud offense, and other than property that has been lawfully seized in relation to a violation of > section 2923.32 of the Revised Code, that has been lost, abandoned, stolen, seized pursuant to a search warrant, or otherwise lawfully seized or forfeited, and that is in the custody of a law enforcement agency shall be kept safely pending the time it no longer is needed as evidence and shall be disposed of pursuant to this section. Each law enforcement agency that has custody of any property that is subject to this section shall adopt a written internal control policy that addresses the keeping of detailed records as to the amount of property taken in by the agency, that addresses the agency's disposition of the property under this section, that provides for the keeping of detailed records of the disposition of the property, and that provides for the keeping of detailed financial records of the amount and disposition of any proceeds of a sale of the property under division (D)(8) of this section and of the general types of expenditures made out of the proceeds retained by the agency and

the specific amount expended on each general type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. The policy is a public record open for inspection under > section 149.43 of the Revised Code.

(2)(a) Every law enforcement agency that has any lost, abandoned, stolen, seized, or forfeited property as described in division (A)(1) of this section in its custody shall comply with its written internal control policy adopted under that division relative to the property. Each agency that has any such property in its custody, except for property to be disposed of under division (D)(4) of this section, shall maintain an accurate record, in accordance with its written internal control policy, of each item of the property. The record shall include the date on which each item of property came into the agency's custody, the manner in which it was disposed of, the date of its disposition, the name of the person who received the property if it was not destroyed, and all other information required by the agency's written internal control policy; however, the record shall not identify or enable the identification of the individual officer who seized any item of property. The record of any property that no longer is needed as evidence, and all financial records of the amount and disposition of any proceeds of a sale under division (D)(8) of this section and of the general types of expenditures made out of the proceeds retained by the agency and the specific amount of each general type of expenditure, shall be open to public inspection during the agency's regular business hours.

Each law enforcement agency that, during any calendar year, has any seized or forfeited property as described in division (A)(1) of this section in its custody shall prepare a report covering the calendar year that cumulates all of the information contained in all of the records kept by the agency pursuant to this division for that calendar year and shall send a copy of the cumulative report, no later than the first day of March in the calendar year following the calendar year covered by the report, to the attorney general. Each report received by the attorney general is a public record open for inspection under > section 149.43 of the Revised Code.

(b) Each law enforcement agency that receives in any calendar year any proceeds of a sale under division (D)(8) of this section shall prepare a report covering the calendar year that

cumulates all of the information contained in all of the public financial records kept by the agency pursuant to division (D)(2)(a) of this section for that calendar year and shall send a copy of the cumulative report, no later than the first day of March in the calendar year following the calendar year covered by the report, to the attorney general. Each report received by the attorney general is a public record open for inspection under > section 149.43 of the Revised Code.

(c) Not later than the fifteenth day of April in the calendar year in which reports are sent to the attorney general under divisions (A)(2)(a) and (b) of this section, the attorney general shall send to the president of the senate and the speaker of the house of reprssentatives a written notification that does all of the following:

(i) Indicates that the attorney general has received from law enforcement agencies reports of the type described in division (A)(2)(a), (A)(2)(b), or both (A)(2)(a) and (b) of this section, whichever is applicable, that cover the previous calendar year and indicates that the reports were received under division (A)(2)(a), (A)(2)(b), or both (A)(2)(a) and (b) of this section, whichever is applicable;

(ii) Indicates that the reports are open for inspection under > section 149.43 of the Revised Code;

(iii) Indicates that the attorney general will provide a copy of any or all of the reports to the president of the senate or the speaker of the house of representatives upon request.

(B) A law enforcement agency that has property in its possession that is required to be disposed of pursuant to this section shall make a reasonable effort to locate the persons entitled to possession of the property in its custody, to notify them of when and where it may be claimed, and to return the property to them at the earliest possible time. In the absence of evidence identifying persons entitled to possession, it is sufficient notice to advertise in a newspaper of general circulation in the county, briefly describing the nature of the property in custody and inviting persons to view and establish their right to it.

(C) A person loses any right that the person may have to the possession, or the possession and ownership, of property if any of the following applies:

(1) The property was the subject, or was used in a conspiracy or attempt to commit, or in the commission, of an offense other than a traffic offense, and the person is a conspirator, accomplice, or offender with respect to the offense.

(2) A court determines that the property should be forfeited because, in light of the nature of the property or the circumstances of the person, it is unlawful for the person to acquire or possess the property.

(D) Unclaimed or forfeited property in the custody of a law enforcement agency, other than contraband that is subject to the provisions of > section 2913.34 or > 2933.43 of the Revised Code, other than property forfeited under > sections 2923.44 to > 2923.47 or > 2925.41 to > 2925.45 of the Revised Code, and other than property that has been lawfully seized in relation to a violation of > section 2923.32 of the Revised Code, shall be disposed of on application to and order of any court of record that has territorial jurisdiction over the political subdivision in which the law enforcement agency has jurisdiction to engage in law enforcement activities, as follows:

(1) Drugs shall be disposed of pursuant to > section 3719.11 of the Revised Code or placed in the custody of the secretary of the treasury of the United States for disposal or use for medical or scientific purposes under applicable federal law.

(2) Firearms and dangerous ordnance suitable for police work may be given to a law enforcement agency for that purpose. Firearms suitable for sporting use or as museum pieces or collectors' items may be sold at public auction pursuant to division (D)(8) of this section. Other firearms and dangerous ordnance shall be destroyed by the agency or shall be sent to the bureau of criminal identification and investigation for destruction by the bureau.

(3) Obscene materials shall be destroyed.

(4) Beer, intoxicating liquor, or alcohol seized from a person who is not the holder of a permit issued under Chapters 4301. and 4303. of the Revised Code or is an offender and forfeited to the state under > section 4301.45 or > 4301.53 of the Revised Code either shall be sold by the division of liquor control, if the division determines that the beer, intoxicating liquor, or alcohol is fit for sale, or shall be placed in the custody of the investigations unit in the department of public safety and be used for training relating to law enforcement activities. The department, with the assistance of the division of liquor control, shall adopt rules in accordance with Chapter 119. of the Revised Code to provide for the distribution of such beer, intoxicating liquor, or alcohol to state or local law enforcement agencies upon their request. If any tax imposed under Title XLIII of the Revised Code has not been paid in relation to the beer, intoxicating liquor, or alcohol, the proceeds of the sale shall first be used to pay the tax. All other money collected under division (D)(4) of this section shall be paid into the state treasury. Any such beer, intoxicating liquor, or alcohol that the division determines to be unfit for sale shall be destroyed.

(5) Money received by an inmate of a correctional institution from an unauthorized source or in an unauthorized manner shall be returned to the sender, if known, or deposited in the inmates' industrial and entertainment fund if the sender is not known.

(6) Vehicles and vehicle parts forfeited under > sections 4549.61 to > 4549.63 of the Revised Code may be given to a law enforcement agency for use in the performance of its duties. Those parts may be incorporated into any other official vehicle. Parts that do not bear vehicle identification numbers or derivatives of them may be sold or disposed of as provided by rules of the director of public safety. Parts from which a vehicle identification number or derivative of it has been removed, defaced, covered, altered, or destroyed and that are not suitable for police work or incorporation into an official vehicle shall be destroyed and sold as junk or scrap.

(7)(a) Computers, computer networks, computer systems, and computer software suitable for police work may be given to a law enforcement agency for that purpose. Other computers, computer networks, computer systems, and computer software shall be disposed of pursuant to division (D)(8) of this section.

(b) As used in this section, "computers," "computer networks," "computer systems," and "computer software" have the same meanings as in > section 2913.01 of the Revised Code.

(8) Other unclaimed or forfeited property, with the approval of the court, may be used by the law enforcement agency that has possession of it. If the other unclaimed or forfeited property is not used by the law enforcement agency, it may be sold, without appraisal, at a public auction to the highest bidder for cash, or, in the case of other unclaimed or forfeited moneys, disposed of in another manner that the court considers proper in the circumstances.

(E)(1)(a) If the property was in the possession of the law enforcement agency in relation to a delinquent child proceeding in a juvenile court, ten per cent of the proceeds from property disposed of pursuant to this section shall be applied to one or more alcohol and drug addiction treatment programs that are certified by the department of alcohol and drug addiction services under > section 3793.06 of the Revised Code and that are specified by the court in its order issued under division (D) of this section. A juvenile court shall not specify an alcohol or drug addiction treatment program in the order unless the program is a certified alcohol and drug addiction treatment program and, except as provided in division (E)(1)(a) of this section, unless the program is located in the county in which the court that issues the orders is located or in a contiguous county. If no certified alcohol and drug addiction treatment program is located in any of those counties, the juvenile court may specify in the order a certified alcohol and drug addiction treatment program located anywhere within this state. The remaining ninety per cent of the proceeds shall be applied as provided in division (E)(1)(b) of this section.

If the property was in the possession of the law enforcement agency other than in relation to a delinquent child proceeding in a juvenile court, all of the proceeds from property disposed of pursuant to this section shall be applied as provided in division (E)(1)(b) of this section.

(b) Except as provided in divisions (D)(4), (5), and (E)(2) of this section and after compliance with division (E)(1)(a) of this section when that division is applicable, the proceeds from property

disposed of pursuant to this section shall be placed in the general fund of the state, the county, the township, or the municipal corporation, of which the law enforcement agency involved is an agency.

(2) Each board of county commissioners that recognizes a citizens' reward program as provided in > section 9.92 of the Revised Code shall notify each law enforcement agency of that county and each law enforcement agency of a township or municipal corporation wholly located in that county of the official recognition of the citizens' reward program by filing a copy of its resolution conferring that recognition with each of those law enforcement agencies. When the board of county commissioners of a county recognizes a citizens' reward program and the county includes a part, but not all, of the territory of a municipal corporation, the board shall so notify the law enforcement agency of that municipal corporation of the official recognition of the citizens' reward program only if the county contains the highest percentage of the municipal corporation's population. Upon receipt of a notice described in this division, each law enforcement agency shall pay twenty-five per cent of the proceeds from each sale of property disposed of pursuant to this section to the citizens' reward program for use exclusively for the payment of rewards. No part of those funds may be used to pay for the administrative expenses or any other expenses associated with a citizens' reward program. If a citizens' reward program that operates in more than one county or in another state or states in addition to this state receives funds pursuant to this section, the funds shall be used to pay rewards only for tips and information to law enforcement agencies concerning felonies, offenses of violence, or misdemeanors that have been committed in the county from which the funds were received.

(F) This section does not apply to the collection, storage, or disposal of abandoned junk motor vehicles. This section shall not be construed to rescind or restrict the authority of a municipal law enforcement agency to keep and dispose of lost, abandoned, stolen, seized, or forfeited property under an ordinance of the municipal corporation or under > sections 737.29 to > 737.33 of the Revised Code, provided that, when a municipal corporation that has received notice as provided in division (E)(2) of this section disposes of property under an ordinance, it shall pay twenty-five per cent of the

proceeds from any sale or auction to the citizens' reward program as provided under that division.

(G) The receipt of funds by a citizens' reward program pursuant to division (E) of this section does not make it a governmental unit for purposes of > section 149.43 of the Revised Code and does not subject it to the disclosure provisions of that section.

(H) This section does not apply to the disposal of stolen or other property recovered by township law enforcement agencies pursuant to > sections 505.105 to > 505.109 of the Revised Code.

(I) For purposes of this section, "law enforcement agency" includes correctional institutions, and "citizens' reward program" has the same meaning as in > section 9.92 of the Revised Code. As used in division (H) of this section, "township law enforcement agencies" means an organized police department of a township, a township police district, a joint township police district, or the office of a township constable.